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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re VICTOR R., et al., Persons Coming  
Under the Juvenile Court Law.

B260742

(Los Angeles County  
Super. Ct. No. DK07053)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ROLANDO R.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County, Robert Draper, Judge. Affirmed.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Stephen D. Watson, Principal Deputy County Counsel, for Plaintiff and Respondent.

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Rolando R. (father) appeals a jurisdictional finding that he sexually abused the five-year-old niece of Maria A. (mother) in 2004, thereby placing their son Victor R. and daughter S.R. at substantial risk of harm. Father argues that the sole evidence offered in support of the allegation consisted of hearsay statements that were rendered inadmissible as the result of a sustained objection under Welfare and Institutions Code section 355, subdivision (c). We affirm, concluding that the court was permitted to consider the hearsay statements because they were sufficiently corroborated by independent evidence.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### ***A. Referral and Initial Investigation***

On August 13, 2014, Los Angeles County Department of Children and Family Services (DCFS) received a referral alleging emotional abuse of Victor. R., then seventeen years old, and his sister S.R., then six years old. The caller alleged Victor had missed an excessive amount of school “to protect his mother when . . . his father stays home from work and is drunk.”

The same day the referral was received, DCFS visited the family home to investigate the allegations. Mother informed DCFS she had been in a relationship with father for over 19 years. Although mother admitted she had “a lot” of arguments with father, she stated that the last “physical altercation[]” had occurred in 2001, “when father was arrested for domestic abuse due to . . . cutting her finger with pocket knife.” In describing this incident, mother explained that father “attempted to stab her with a knife,” which caused her to raise her hands in self-defense, resulting in a cut on her finger. Mother stated that father was intoxicated at the time of the incident and still “ha[d] a problem with alcohol.” According to mother, father became “verbally abusive” when he drank and would “throw[] objects such as the kitchen chairs.” Mother also reported that “the children . . . ha[d] been present during the arguments.” On some occasions, Victor had “come [out] of his room and st[ood] in front of mother to prevent father from physically assaulting her.” Mother had never seen father abuse the children and did not believe he would ever hurt them.

DCFS asked mother about “an investigation in 2004 . . . where father was identified as an alleged perpetrator in a sexual abuse [of a minor].” Mother stated that her niece, who was five years old at the time of the incident, had reported that father sexually molested her by digitally penetrating her vagina. Father “left the home after the allegations were made . . . and was never interviewed by DCFS or law enforcement because his whereabouts were unknown.” Father returned to mother’s home a year later. Mother told DCFS she “knew father sexually abused her niece, because she believed her niece over him.” When questioned whether she was afraid father might act inappropriately toward S. (then six years old), mother said she had warned father he would be in “serious trouble if he ever” engaged in such conduct. Mother also stated that she tried not to leave the children alone with father and always positioned herself between father and S. when the child slept in their bed.

DCSF also interviewed S., who reported that father would “scream” at mother after drinking beer. S. said she felt afraid when father yelled at mother, which caused “her heart [to] hurt.” S. felt safe with father when he was “not drinking” and denied having been physically or sexually abused.

Victor told DCFS he had missed four days of school “because he did not want to leave his mother home alone with father.” Victor explained that father had a “drinking problem” that caused him to become “verbally abusive” and “throw objects toward mother such as a kitchen chair.” Victor stated that he “[came] out to defend his mother and prevent[] father from physically putting his hands on [her].” Although Victor reported that father had “always been this way,” he stated that father had never physically abused him or S.

When questioned about the 2004 sexual abuse investigation, Victor stated that father had “left the home . . . due to . . . touching [the children’s] cousin.” Victor also said father was “not allowed to come around his mother’s family, because of the abuse toward [the] cousin.” Victor denied ever having been sexually abused by father and denied ever witnessing any inappropriate sexual conduct toward his sister.

DCSF also interviewed father, who stated that he and mother had “arguments just like any other couple.” Father admitted he had been arrested for domestic abuse in 2001 after cutting mother with a knife. Father claimed mother had “scared him from behind” while he was “cutting food,” which caused him to turn around and accidentally cut her finger. Father admitted he was an alcoholic and had a “problem with alcohol.” Father estimated that he drank 12 beers a day on the weekends.

DCFS also questioned father about the sexual abuse investigation in 2004. Father reported that, on the night of the incident, he was at the maternal aunt’s house “using crystal meth” with five other men who were in the home. Father stated that he had “not touch[ed] the child,” but was “singled out” and “decided to flee” because he “does not trust [l]aw [e]nforcement.”

DCFS informed father that the court had issued a removal order that permitted the agency to detain the children from his care. In response, father told DCFS he was willing to leave the home. At the conclusion of the interview, father gathered his belongings and left the home with the DCFS social worker.

### ***B. Section 300 Petition and Detention***

On August 26, 2014, DCFS filed a petition alleging that Victor and S. fell within the jurisdiction of the juvenile court under section 300, subdivisions (a) (b), (d) and (j).<sup>1</sup> The petition alleged a single count under subdivision (a) asserting that the parents had a “history of engaging in violent altercations in which the father threw objects, including chairs, at the mother. . . . On a prior occasion, the father cut the mother’s finger with a pocket knife.” The subdivision (a) count further alleged that the “violent altercations on the part of the father” and mother’s failure to protect the children from the altercations placed the children at risk of physical harm.

The petition included three counts under subdivision (b). Count (b)(1) was identical to the count set forth under subdivision (a). Count (b)(2) alleged that father’s

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<sup>1</sup> Unless otherwise noted, statutory references are to the Welfare and Institutions Code.

current abuse of alcohol rendered him incapable of providing regular care for the children; that mother had failed to protect the children by allowing father to reside in the home despite knowledge of his alcohol abuse; and that such conduct placed the children at risk of harm.

Count (b)(3) alleged that “[o]n a prior occasion, the . . . father sexually abused the children’s maternal cousin . . . when the cousin was five years old”; that mother had failed to protect the children by allowing the father to reside in the home despite knowledge of the prior sexual abuse; and that such conduct placed the children at substantial risk of harm. The counts alleged under subdivisions (d) and (j) contained identical language.

DCFS filed a detention report in support of the petition that contained a summary of its interviews with the family members. The report also summarized the family’s prior “child welfare history,” which described two previous referrals. In 1998, the agency received a referral that “alleged physical abuse of Victor . . . by father.” The allegations were deemed “inconclusive.” The second referral, received in June of 2004, related to the prior sexual abuse investigation. According to the detention report, the 2004 referral had alleged “that the mother of [the victim] . . . observed blood in the [the victim’s] panties and the [victim] reported that her uncle [father] had touched her . . . in her private areas.” The case history indicated the allegations of sexual abuse had been “substantiated” and that mother had participated in voluntary services for sexual awareness, which she successfully completed in January of 2005. Victor underwent a medical examination, but no evidence of abuse was found. The father was not interviewed about the referral and did not participate in any services because his “whereabouts were unknown during the investigation.” DCFS terminated the case after mother had “complied with all the orders.”

At the detention hearing, the juvenile court found there was prima facie evidence the children were persons described in section 300 and ordered them detained from father and placed under temporary custody of DCFS, which elected to leave the children in the home of mother. The court also ordered family preservation services and monitored

visits for father. The matter was set for a contested jurisdiction and disposition hearing on October 2, 2014.

### ***C. Jurisdiction and Disposition Orders***

#### ***1. DCFS's jurisdiction/disposition report***

On September 8, 2014, DCFS submitted a "Jurisdiction/Disposition Report" that summarized additional interviews the agency had conducted with family members. Mother and Victor provided information that was substantially similar to the information they had provided during their first interviews. Victor stated that father became verbally abusive toward mother when he drank, but was not physically abusive toward any of the family members. Victor also stated that all he knew about the prior sexual abuse allegation was "that [his] dad [could not] visit [the maternal] aunt or . . . cousin's home for an incident that happened a long time ago."

Mother told DCFS that father "pushe[d] chairs when he [was] upset," "[came] home intoxicated" and "accuse[d] her of being unfaithful." In regards to the sexual abuse allegations, mother stated that her sister had informed her that the children's cousin had accused father of "touch[ing] her private part during a family reunion 10 years ago." Mother also reported that, after the incident, she was separated from father for approximately two years.

Father admitted to DCFS that he "move[d] chair[s] with force when . . . mad" and that Victor had intervened in an altercation with mother on at least one prior occasion. Father also confirmed that he drank about 12 beers a day on the weekends. When asked about the sexual abuse investigation in 2004, father stated: "I cannot remember ever touching my wife's niece. I don't remember well, but what I remember is that it was a party at my wife's brother-in-law's home. There was a group of people using crystal. They were there until 6:00 a.m. I was only drinking and we slept over. The next day, my wife's sister accused me of touching the little girl. . . I told them to be careful because I was not the only one there. . . There was a social worker who investigated the allegations.

I left the home and we were separated for 2 or 3 years. . . . There was no police report or investigation. I didn't touch the child her at all. I was never alone with the child."

In its assessment and evaluation, DCFS concluded that "the main problem with [t]his family is father's drinking as the family confirmed that most[] of the arguments begin[] when father is under the influence of alcohol." DCFS noted that although the children had "not been harmed, . . . they ha[d] witnessed the arguments between their parents" and Victor had been forced to intervene. In regards to the sexual abuse allegation, DCFS reported that although there was never a "police investigation" into the matter, the case history indicated the referral had been substantiated based on the statements of the victim and the victim's mother.

DCFS recommended that the court sustain each of the jurisdictional allegations set forth in the section 300 petition, declare the children dependents of the court, order the children placed with mother under the condition that father not reside in the home and order the parents to participate in a variety of reunification services, including "perpetrator" sexual abuse counseling for father.

After DCFS submitted its jurisdiction report, father filed an evidentiary objection pursuant to section 355, subdivision (c) challenging the "hearsay" statements of the maternal aunt and cousin regarding the sexual abuse incident in 2004. Father argued that the court could not consider or rely on those statements "unless the makers of the statements are made available by the DCFS for cross examination."

## *2. Jurisdiction and disposition hearing*

At the jurisdiction and disposition hearing, the court first addressed father's evidentiary objection, inquiring whether DCFS intended to call the maternal aunt and cousin. DCFS informed the court it had subpoenaed both witnesses, but neither had attended the hearing. The court sustained father's objections, explaining that "the testimony or statements by the people to whom the objection has been made cannot be the sole basis for the court's finding."

After introducing the detention and jurisdiction reports into evidence, DCFS argued that the court should sustain the petition in its entirety. DCFS explained that the reports contained overwhelming evidence that father became emotionally and physically abusive toward mother when drinking alcohol; that father had a problem with alcohol; and that the children had been exposed to father's intoxication and violent outbursts. DCFS emphasized the risk of harm to Victor was especially high because he had repeatedly "stood in front of mother during these altercations."

On the sexual abuse allegations set forth in counts (b)(3), (d) and (j), DCFS argued that the record showed the 2004 referral had been substantiated and that father had fled before he could be interviewed in the matter. DCFS also noted that father admitted he had been drinking on the night of the incident and that mother believed father had committed the abuse based on her conversations with her niece. DCFS argued that because "[f]ather fled" without "address[ing] the [sexual abuse] issues," and because mother had allowed father to return to the home despite knowledge of the "substantiated referral," the children were "currently" at risk of harm.

Father's counsel submitted on the counts related to his violent conduct toward mother and his alcohol abuse. However, father's counsel argued the court should dismiss each of the counts alleging sexual abuse because the only evidence DCFS had presented in support of the allegation consisted of the hearsay statements that were the subject of the sustained section 355 objection.

Mother's counsel argued that the sexual abuse allegations against her should be dismissed because there was no evidence that the children were at risk of sexual abuse. Counsel contended that the fact Victor and S. had never suffered any form of sexual abuse demonstrated that the services mother had received in 2004 and 2005 were effective in teaching her how to protect the children from father. Mother also requested that the court dismiss the subdivision (a) count because DCFS's reports indicated that the parental confrontations were only "verbal arguments." On the remaining subdivision (b) counts, mother requested that the allegations against her be amended to state that she was



“unable to protect” the children from father’s conduct, rather than having “failed” to protect them from such conduct.

Counsel for the children requested that the court sustain each count under subdivisions (a) and (b), but contended there was insufficient evidence to support the subdivision (d) or (j) counts.

The court sustained counts (a), (b)(1) and (b)(2), but amended each count to state that mother was “unable” to protect the children. The court also sustained the sexual abuse allegation in count (b)(3), but struck the sexual abuse allegations set forth under subdivisions (d) and (j).

On the question of disposition, father’s counsel argued he should not be ordered to participate in a program for perpetrators of sexual abuse because there was insufficient evidence to prove he had engaged in such conduct and because the incident was “remote in time.” The court stated that it would permit “father to address the sexual abuse issues through individual counseling,” explaining that it had been a “close case whether to sustain” the (b)(3) count.

## **DISCUSSION**

Father does not challenge the portion of the court’s jurisdictional order sustaining counts (a), (b)(1) and (b)(2), which alleged that father’s violent altercations with mother and his alcohol abuse placed the children at substantial risk of harm. He argues, however, that there was insufficient evidence to sustain count (b)(3), which alleged that father had sexually abused the children’s maternal cousin in 2004 and that such conduct placed the children at current risk of harm.

### ***A. We Exercise our Discretion to Review the True Finding on Count (b)(3)***

DCFS initially contends we need not determine whether there was substantial evidence to support the trial court’s finding under count (b)(3) because the court’s unchallenged findings under counts (a), (b)(1) and (b)(2) provide an independent basis for jurisdiction. As DCFS correctly notes, “an appellate court may decline to address the evidentiary support for any remaining jurisdictional findings once a single finding has

been found to be supported by the evidence.” (*In re I.A.* (2011) 201 Cal.App.4th 1484, 1492 (*I.A.*); see also *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 [“[w]hen a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the [trial] court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence”].) However, even when an alternative basis for jurisdiction has been established, we retain discretion to review a jurisdictional finding that “could be prejudicial to [the parent] if [he or she] is involved in future child dependency proceedings” (*In re D.C.* (2011) 195 Cal.App.4th 1010, 1015) or have “other consequences for [the appellant], beyond jurisdiction.” (*I.A., supra*, 201 Cal.App.4th at p. 1494; see also *In re John S.* (2001) 88 Cal.App.4th 1140, 1143 [reviewing jurisdictional finding where reversal could impact “placement or reunification orders]; *In re J.K.* (2009) 174 Cal.App.4th 1426, 1431-1432 (*J.K.*) [reviewing jurisdictional finding despite subsequent termination of jurisdiction based on potential impacts on father’s “custody rights” and “future . . . dependency proceedings”].)

In this case, there is little question that the court’s true finding on the charge of sexual abuse could prejudice father in any future dependency proceeding. Given the nature of the conduct at issue—digitally penetrating a five-year-old girl—the court’s finding might support jurisdiction over any minor with whom the father might reside in the future. (See *Los Angeles County Department of Children and Family Services v. Superior Court* (2013) 215 Cal.App.4th 962, 968 (*Department of Children and Family Services*) [“Cases overwhelmingly hold that sexual abuse of one child may constitute substantial evidence of a risk to another child in the household—even to a sibling of a different sex or age or to a half sibling”]; *In re Ana C.* (2012) 204 Cal.App.4th 1317, 1332 [father’s sexual abuse of 11-year-old daughter of a cohabitant “support[ed] the commonsense conclusion that most every person in the family home was at risk of sexual abuse”].) The finding would almost certainly support jurisdiction over any female child with whom he might reside. (See, e.g., *Department of Children and Family Service, supra*, 215 Cal.App.4th at p. 969 [“aberrant sexual behavior directed at one child in the

household places other children in the household at risk, and this is especially so when both children are females”].)

The sexual abuse allegation may also impact the father’s future custody rights over his daughter S. (See *J.K.*, *supra*, 174 Cal.App.4th at p. 1431 [reviewing jurisdictional finding against father after termination of jurisdiction based on “adverse effect[s] on his custody rights”].) On May 20, 2015, the juvenile court terminated its jurisdiction over both children, released them to mother and entered a juvenile custody order granting her sole custody of S. with one hour of monitored visitation per week for father.<sup>2</sup> To the extent father wishes to seek additional visitation rights or modifications to the custody order in the future, it is foreseeable he will be prejudiced by a finding that he molested the children’s cousin.<sup>3</sup> (See *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1754 [“[f]ew crimes carry as much (or as much deserved) social opprobrium as child molestation”].)

## ***B. The Court’s Finding of Sexual Abuse Is Supported by Substantial Evidence***

### *1. Standard of review*

We review the juvenile court’s jurisdiction findings for substantial evidence. (*J.K.*, *supra*, 174 Cal.App.4th at p. 1433; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) Under this standard of review, we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393 (*Savannah*); *In re Tania S.* (1992) 5 Cal.App.4th 728, 733.)

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<sup>2</sup> On this court’s own motion, we take judicial notice of the minute order entered by the juvenile court on that date. (Evid. Code §§ 452, subd. (d), 459, subd. (a).)

<sup>3</sup> The court’s order terminating jurisdiction does not render father’s appeal of the sexual abuse finding moot because the finding may still prejudice father in any future dependency proceedings and affect his future custody rights. (See *J.K.*, *supra*, 174 Cal.App.4th at p. 1431 [termination of jurisdiction did not render father’s appeal of jurisdictional findings moot because the findings “could affect [f]ather in . . . future . . . dependency proceedings” and “adverse[ly] [a]ffect his custody rights”].)

We determine only whether there is any substantial evidence, contradicted or uncontradicted, that supports the juvenile court's order, resolving all conflicts in support of the determination and indulging all legitimate inferences to uphold the lower court's ruling. (*In re John V.* (1992) 5 Cal.App.4th 1201, 1212; *In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) If there is substantial evidence to support the juvenile court's order, we must uphold the order even if other evidence supports a contrary conclusion. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

2. *Substantial evidence supports the juvenile court's sexual abuse finding*

Father contends that the "sole evidence" supporting the sexual abuse allegation set forth in count (b)(3) consists of hearsay statements in the DCFS reports that indicate the maternal aunt and cousin identified him as the perpetrator during the 2004 investigation. Father further contends that because the juvenile court sustained an objection to those statements pursuant to section 355, subdivision (c), the court could not rely on such evidence in making its jurisdictional findings.

Under section 355, subdivision (b), "[a] social study prepared by the petitioning agency [DCFS], and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d)." Subdivision (c)(1), however, provides that "[i]f any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions: [¶] . . . [¶] (D) The hearsay declarant is available for cross-examination."<sup>4</sup>

After father objected to the maternal aunt and cousin's hearsay statements, DCFS failed to present either of the witnesses for cross-examination. As a result, the court

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<sup>4</sup> The parties do not dispute that the other exceptions set forth in subdivision (c)(1) are not relevant to these proceedings.

sustained father's objection. Contrary to father's suggestion, however, the trial court's sustained objection did not bar the court from considering the hearsay statements or render those statements inadmissible. Rather, under section 355, subdivision (c), the court could still consider the hearsay statements, but only if they were sufficiently corroborated by independent evidence. (See *In re B.D.* (2007) 156 Cal.App.4th 975, 984 (*B.D.*) [objection to hearsay statements under § 355, subd. (c) "did not render those statements inadmissible. Rather, the objection meant that uncorroborated, the hearsay statements did not constitute substantial evidence and could not be used as the exclusive basis for finding jurisdiction under section 300"]; *In re Christian P.* (2012) 208 Cal.App.4th 437, 448; *In re R.R.* (2010) 187 Cal.App.4th 1264, 1280 ["Section 355 . . . does not bar hearsay evidence at a jurisdictional hearing but, if a timely objection is made and no hearsay exception applies, the evidence must be corroborated"].) "The question before us, then, is whether there was corroborating evidence in this record which could support the witnesses' hearsay statements sufficiently to sustain a jurisdictional finding." (*B.D.*, *supra*, 156 Cal.App.4th at p. 984.)

"Corroborating evidence is evidence which supports a logical and reasonable inference that the act described in the hearsay statement occurred. [Citation]. The quantum of corroboration necessary to support a jurisdictional finding is 'somewhat analogous to the rule in criminal law requiring independent corroborative proof of accomplice testimony[.]'" (*R.R.*, *supra*, 187 Cal.App.4th at pp. 1280-1281.) Under this rule, "[c]orroborating evidence may be slight, entirely circumstantial, and entitled to little consideration when standing alone. [Citations.] . . . It is 'sufficient if it tends to connect the [allegedly offending parent] with the [alleged act] in such a way as to satisfy the [trier of fact] that the [hearsay declarant] is telling the truth.'" (*People v. Valdez* (2012) 55 Cal.4th 82, 148 [summarizing standard applicable to accomplice testimony]; see also *Christian P.*, *supra*, 208 Cal.App.4th at p. 448 ["[c]orroborative evidence, whether direct or circumstantial, . . . is sufficient if it tends to connect the allegedly offending parent with the alleged . . . act even though it is slight and "entitled, when standing by itself, to but little consideration""].) "Unless a reviewing court determines that the corroborating

evidence should not have been admitted or that it could not reasonably tend to connect [the allegedly offending parent] with the commission of [the act], the finding of the trier of fact on the issue of corroboration may not be disturbed on appeal.” (*People v. Szeto* (1981) 29 Cal.3d 20, 25.)

Applying those standards here, we conclude the record contains sufficient evidence to corroborate the hearsay declarants’ statements that father was the perpetrator of the sexual abuse. First, father told DCFS he “decided to flee” after being accused of the sexual abuse in 2004 because he “did not trust [l]aw [e]nforcement.” In discussing corroboration of accomplice testimony, our courts have held that “[f]light tends to connect an accused with the commission of an offense and may indicate that an accomplice’s testimony is truthful. [Citations.] As such, the flight of one who knows he is suspected of committing a crime may be sufficient to corroborate the testimony of an accomplice. [Citation.]’ [citations.]” (See *People v. Felton* (2004) 122 Cal.App.4th 260, 272.) The fact that father fled immediately after being accused of sexual abuse, and did so for the express purpose of avoiding law enforcement, tends to corroborate the hearsay declarants’ assertion that he was the perpetrator of the abuse.

Second, DCFS’s social study reports indicate that father provided inconsistent statements when describing his recollection of the incident that occurred in 2004. When questioned on August 21, 2014, father reported he and five other men had been using methamphetamine on the night of the incident. However, in an interview conducted on September 16, father denied he had been using methamphetamine, asserting that he had only been drinking alcohol. (Cf. *People v. Hannie* (1962) 202 Cal.App.2d 462, 465 [“contradictory statements of an accused with reference to the crimes charged constitute corroboration evidence by showing a consciousness of guilt”]; *B.D., supra*, 156 Cal.App.4th at p. 985 [mother’s “inconsistent” statements regarding what caused a child’s bloody nose provided corroboration of hearsay statement that mother had hit the child].)

Third, Victor told DCFS that although he was uncertain whether father had committed the sexual abuse, he knew the maternal aunt had prohibited father from being

around her family or entering her home ever since the incident occurred. This evidence indicates that, following the 2004 incident, the maternal aunt took steps to protect her daughter from father, which tends to corroborate her hearsay statement that she believed he was the perpetrator. (Cf. *B.D.*, *supra*, 156 Cal.App.4th at p. 985 [hearsay declarant's statement that mother had hit child corroborated by child's change in behavior toward mother after the incident].)

Considered together, father's decision to flee after being accused of the sexual abuse, his inconsistent statements regarding whether he was using methamphetamine on the night in question and maternal aunt's changed conduct toward father constitute sufficient, corroborating evidence supporting the cousin and maternal aunt's hearsay statements. The court was therefore permitted to consider those hearsay statements in making its jurisdictional finding.

Because the hearsay was sufficiently corroborated, the trial court was also permitted to consider evidence that was directly predicated on that hearsay, including mother's statements that: (1) after speaking with her sister and niece, she believed father had committed the sexual abuse; (2) she had warned father not to engage in any similar conduct toward S.; and (3) she "trie[d] not to leave her children home alone with father" and positioned herself between S. and father whenever the child slept in their bed.<sup>5</sup>

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<sup>5</sup> DCFS contends that mother's statements qualify as "corroborative evidence" that indicates the hearsay declarants' statements are truthful. To be corroborative, however, the evidence must be "independent" of the challenged hearsay and "connect the [allegedly offending parent] with the [charged conduct] without aid or assistance from the [the hearsay declarant's] testimony. [Citation.]" (*People v. Avila* (2006) 38 Cal.4th 491, 563.) Mother's statements that she believed father committed the sexual abuse and had taken steps to protect her children from him were predicated directly on hearsay statements that the maternal aunt and cousin made to mother regarding the incident. As a result, mother's statements were not "independent" of the hearsay and therefore cannot be relied on to corroborate it. However, because the hearsay declarants' statements were sufficiently corroborated by other evidence in the record, the court was permitted to consider the hearsay and any evidence that was predicated on the hearsay (including mother's statements) when making its jurisdictional finding.

In sum, the juvenile court was permitted to rely on the following evidence in assessing whether father had committed the sexual abuse: (1) during the 2004 investigation, the children's then five-year-old cousin stated that father had sexually molested her by digitally penetrating her vagina; (2) the maternal aunt and mother both believed that father had perpetrated the sexual abuse and took precautions to protect their own children from him; (3) immediately after being accused of the sexual molestation, father fled the area to avoid speaking with police and did not return for over a year; (4) father provided inconsistent statements regarding whether he was on methamphetamine on the night of the incident. Considered together, this constitutes substantial evidence supporting the court's jurisdictional finding.<sup>6</sup>

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<sup>6</sup> Father also argues that DCFS failed to present sufficient evidence that father's prior act of sexual abuse placed the children at current risk of harm. (See *Savannah M.*, *supra*, 131 Cal.App.4th at p. 1395 [to sustain finding under subdivision (b), there must be evidence that parent engaged in one of the proscribed forms of conduct and that, "at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur)"].) However, the only argument father presents on this issue is that DCFS failed to demonstrate a current risk to children because it "never proved . . . any sexual abuse by [f]ather of any child." In other words, father asserts that because DCFS did not prove the sexual abuse occurred, it likewise failed to demonstrate any current risk to the children that was based on that unproven conduct. Having concluded that substantial evidence supports the court's finding that father committed the sexual abuse, we must reject this argument.



## **DISPOSITION**

The court's jurisdictional and disposition orders are affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

SEGAL, J.